

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of
Encino Broadcasting, LLC
For Renewal of Licenses for
Station KELG(AM)
Manor, Texas
Station KOKE(AM)
Pflugerville, Texas
Station KTXZ(AM)
West Lake Hills, Texas
NAL/Acct. No. MB-201341410018
FRN: 0017558040
File No. BR-20130808AIG
Facility ID No. 17807
File No. BR-20130808AIH
Facility ID No. 54661
File No. BR-20130808AII
Facility ID No. 59278

ORDER

Adopted: September 24, 2014

Released: September 25, 2014

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau ("Bureau") and Encino Broadcasting, LLC ("Licensee"), licensee of Stations KELG(AM), Manor, Texas; KOKE(AM), Pflugerville, Texas; and KTXZ(AM), West Lake Hills, Texas (collectively, "Stations"). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal applications ("Renewal Applications") for the Stations as to whether the Licensee violated Section 73.3539 of the Commission's Rules ("Rules"), which sets forth the filing deadline for license renewal applications, and Section 301 of the Communications Act of 1934, as amended, ("Act"), which requires a valid authorization from the Commission to operate a broadcast station.

2. The Consent Decree stipulates that the Licensee violated Section 73.3539 and Section 301 and provides, among other things, that the Licensee will make a Two Thousand Dollar (\$2,000) voluntary contribution to the United States Treasury, reduced from the proposed forfeiture amount based on the Bureau's review of the Licensee's tax returns. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating the Bureau's investigation of potential violations of the Rules and the Act in connection with the captioned applications and granting the Renewal Applications.

1 See 47 C.F.R. § 73.3539.

2 47 U.S.C. § 301.

3 See Encino Broadcasting, LLC, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15821 (MB 2013) (proposing \$18,000 forfeiture for apparent violation of Section 73.3539 and Section 301).

4. Based on the record before us, we conclude that nothing in that record creates a substantial or material question of fact whether the Licensee possesses the basic qualifications to remain a Commission licensee and has satisfied the standards in Section 309(k)(1) of the Act for renewal of the Stations' licenses.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>4</sup> and by the authority delegated by Sections 0.61 and 0.283 of the Rules,<sup>5</sup> the Consent Decree attached hereto IS ADOPTED.

6. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules,<sup>6</sup> that the *Notice of Apparently Liability for Forfeiture* issued to Encino Broadcasting, LLC, for willfully violating Section 73.3539 of the Commission's Rules, and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended, IS HEREBY REDUCED to \$2,000.

7. IT IS FURTHER ORDERED that the investigation by the Media Bureau of the matters noted above IS TERMINATED.

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Encino Broadcasting, LLC, 9434 Parkfield Drive, Austin, TX 78758, and to its counsel, Lee J. Peltzman, Esq., Shainis & Peltzman, Chartered, 1850 M Street N.W., Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

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<sup>4</sup> 47 U.S.C. § 4(i).

<sup>5</sup> 47 C.F.R. §§ 0.61, 0.283.

<sup>6</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by: (a) the Media Bureau of the Federal Communications Commission; and (b) Encino Broadcasting, LLC, licensee of Stations KELG(AM), Manor, Texas; KOKE(AM), Pflugerville, Texas; and KTXZ(AM), West Lake Hills, Texas.

**II. Definitions**

2. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§151 *et seq.*;
  - (b) “Bureau” means the Media Bureau of the Federal Communications Commission;
  - (c) “Commission” or “FCC” means the Federal Communications Commission;
  - (d) “Effective Date” means the date on which the Bureau releases the Order;
  - (e) “Filing Date Rule” means Section 73.3539 of the Commission’s Rules, 47 C.F.R. § 73.3539;
  - (f) “Final Order” means the status of the Order after the period for administrative and judicial review has lapsed;
  - (g) “Investigation” means the Bureau’s investigation of Licensee’s violations of the Filing Date Rule and Section 301;
  - (h) “Licensee” means Encino Broadcasting, LLC, licensee of Stations KELG(AM), Manor, Texas; KOKE(AM), Pflugerville, Texas; and KTXZ(AM), West Lake Hills, Texas;
  - (i) “Order” means an order of the Bureau adopting this Consent Decree;
  - (j) “Parties” means Licensee and the Bureau;
  - (k) “Renewal Applications” means the pending applications for the renewal of the licenses for Stations KELG(AM), Manor, Texas; KOKE(AM), Pflugerville, Texas; and KTXZ(AM), West Lake Hills, Texas (File Nos. BR-20130808AIG, BR-20130808AIH, and BR-20130808AII, respectively);
  - (l) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations;
  - (m) “Section 301” means Section 301 of the Communications Act of 1934, as amended; and

- (n) “Stations” means Stations KELG(AM), Manor (Facility ID No. 17807), Texas; KOKE(AM), Pflugerville, Texas (Facility ID No. 54661); and KTXZ(AM), West Lake Hills, Texas (Facility ID No. 59278), licensed to Encino Broadcasting, LLC.

### III. Background

3. On August 8, 2013, the Licensee untimely filed the Renewal Applications for the Stations’ prior license term in violation of the Filing Date Rule.<sup>7</sup> On July 30, 2013, the staff wrote to the Licensee, indicating that the Stations’ licenses would expire on August 1, 2013, and that: (1) all authority to operate the Stations would terminate as of August 1, 2013; and (2) the Stations’ call letters would be deleted from the Commission’s database.<sup>8</sup> The Licensee was advised that any operation of the Stations after August 1, 2013, was unauthorized.<sup>9</sup> On August 8, 2013, Licensee filed the Renewal Applications. On August 12, 2013, the Licensee filed requests for Special Temporary Authority (“STA”) to continue the Stations’ operations pending consideration of the Renewal Applications.<sup>10</sup> It also filed a Petition for Reconsideration (“Petition”) of the *License Expiration Letter* on August 28, 2013, in which it sought reinstatement of the Stations’ licenses and call signs. On November 18, 2013, the Bureau granted the Petition, reinstated the Stations’ licenses, and issued a *Notice of Apparent Liability for Forfeiture* for the Violations.<sup>11</sup> The Licensee has timely disputed the *NAL* based on financial hardship.

4. Because of the issues identified in the Bureau’s investigation and the untimeliness of the Renewal Applications, the Parties have agreed to enter into this Consent Decree, to which both the Licensee and the Bureau intend to be legally bound.

### IV. Agreement

5. The Parties acknowledge that any proceeding that might result from the Licensee’s violations of the Filing Date Rule and Section 301 of the Act, referred to in Paragraph 3 above, would be time consuming and require substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote the Licensee’s future compliance with the Filing Date Rule and Section 301 of the Act, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. The Licensee and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Both the Licensee and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Licensee agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree.

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<sup>7</sup> The Renewal Applications were due on or before April 1, 2013.

<sup>8</sup> *Letter to Jose J. Garcia* (MB Jul. 30, 2013) (“*License Expiration Letter*”).

<sup>9</sup> *Id.*

<sup>10</sup> See File Nos. BLSTA-20130812ACC (KELG(AM)), BLSTA-20130812ACF (KOKE(AM)), BLSTA-20130812ACB (KTXZ(AM)) (collectively, “STA Requests”). The staff granted the STA Requests on October 21, 2013. *Letter to Lee J. Peltzman, Esq.*, Ref. 1800B3 (MB Oct. 21, 2013).

<sup>11</sup> See *Encino Broadcasting, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15821 (MB 2013) (proposing \$18,000 forfeiture for apparent violation of Section 73.3539 and Section 301) (“*NAL*”).

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Licensee and the Bureau concerning the Licensee's Violations at the Stations, as discussed herein.

8. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violations in any action against the Licensee, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

9. The Licensee hereby stipulates that it violated the Filing Date Rule by filing the Renewal Applications after April 1, 2013, and that it violated Section 301 of the Act by continuing the Stations' operations without STA after their licenses had expired.

10. The Licensee agrees to make a voluntary contribution to the United States Treasury in the amount of Two Thousand Dollars (\$2,000). Such contribution will be made, without further protest or recourse to a *trial de novo*, by a check or similar instrument, wire transfer or money order payable to the order of the Federal Communications Commission. Payment by check or money order maybe mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SLMO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORE" in block number 24A (payment type code). The Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Alexander.Sanjenis@fcc.gov.

11. The Bureau will grant the pending Renewal Applications for the Stations (File Nos. File Nos. BR-20130808AIG, BR-20130808AIH, and BR-20130808AII) after the Effective Date, provided that the following conditions have been met: 1) the Licensee has fully and timely satisfied its obligation to make the payment of its voluntary contribution referenced in Paragraph 10 of this Decree; and 2) there are no issues other than the Violations that would preclude the grant of the Renewal Applications.

12. The Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent the Licensee fails to satisfy any condition, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, designation of the matter for hearing, letters of admonishment, or forfeitures.

13. The Consent Decree will be binding on the Licensee's successors-in-interest and assigns. The Licensee agrees that any future application to assign or transfer control of the Stations will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties set forth in this Consent Decree with regard to the Stations.

14. The Licensee waives any and all rights that it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided that the Order adopts the Consent Decree without change, addition or modification.

15. The Licensee waives any claims that it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters discussed in this Consent Decree.

16. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, none of the Parties shall contest the continuing validity of the Consent Decree or the Order. The Licensee and the Bureau further agree that they will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and that they will consent to a judgment incorporating the terms of this Consent Decree.

17. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

18. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

**MEDIA BUREAU  
FEDERAL COMMUNICATIONS COMMISSION**

By: \_\_\_\_\_  
William T. Lake, Chief

Date: \_\_\_\_\_

**ENCINO BROADCASTING, LLC**

By: \_\_\_\_\_  
Jose J. Garcia, Jr., Owner

Date: \_\_\_\_\_